

AMS/FAST CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 23-125

Date Received: August 28, 2023

Title: T3.10.1 Contract Administration - CPARS Update for OIG Closure & Unilateral Changes Required by Law

Initiator Name: Erica Conley

Initiator Organization Name / Routing Code: Procurement Policy Branch, AAP-110

Initiator Phone: 202-267-7387

ASAG Member Name: Monica Rheinhardt

ASAG Member Phone: 202-267-1441

Policy and Guidance: (Please check only one box)

- | | |
|---|--|
| <input type="checkbox"/> Policy | <input type="checkbox"/> Procurement Tools and Resources |
| <input checked="" type="checkbox"/> Guidance | <input type="checkbox"/> Real Property Templates and Samples |
| <input type="checkbox"/> Procurement Samples | <input type="checkbox"/> Procurement Clauses |
| <input type="checkbox"/> Procurement Templates | <input type="checkbox"/> Real Property Clauses |
| <input type="checkbox"/> Procurement Forms | <input type="checkbox"/> Other Tools and Resources |
| <input type="checkbox"/> Procurement Checklists | |

Summary of Change:

(1) Adds item T3.10A.5.a.(3)(c), Unilateral Changes Required By Law, which describes the applicability and process for utilizing AMS clause 3.10.1-28, Changes Required by Law.

(2) T3.10.1.B9.d - In paragraph d. "Training" changes from "should" to "must" and "CORs" is added in the parenthetical regarding FAA personnel with CPARS responsibilities.

Reason for Change:

(1) AAQ requested a clause to provide authority for the FAA to unilaterally modify contracts when the agency is required to modify contracts in order to implement a statute, executive order, or other legal authority. The agency has had to make changes to existing contracts in recent years to implement mandates imposed by statute or executive order. The new AMS clause "3.10.1-28, Changes Required by Law" is added to AMS this quarter. This corresponding AMS Guidance adds item T3.10.A.5.a(3)(c) to inform acquisition personnel about the applicability and use of the clause.

(2) The updated language in T3.10.1.B9.d is in response to OIG 's suggestions to close out the OIG Audit for Report ZA2023022 Recommendation #9. Associated changes were made in the

COR Delegation Memo in the enumerated COR Responsibilities. Additional language was added to line 4, Comply with all COR training requirements "including CPARS training, when applicable".

Development, Review, and Concurrence: AAP, AAQ, AGC

Target Audience: FAA Acquisition Workforce

Briefing Planned: No.

ASAG Responsibilities: None.

Section / Text Location: FAST-AMS Procurement Policy & Guidance-Guidance-T3.10.1

The redline version must be a comparison with the current published FAST version.

☒ I confirm I used the latest published version to create this change / redline

or

☐ This is new content

Links:

https://fast.faa.gov/docs/procurementGuidance/guidanceT3.10.1.pdf#nameddest=guidanceT3_10_1

Attachments:

Guidance T3.10.1 redline

Guidance T3.10.1 final

Other Files: N/A.

Redline(s): See below.

Section Revised: T3.10.1 – Contract Administration

Procurement Guidance - (~~7/2023~~10/2023)

T3.10.1 Contract Administration Revised 1/2009

A General Contract Administration Revised 9/2020

- 1 Contract Management Revised 9/2021
- 2 Basic Responsibility for Contract Administration Revised 7/2012
- 3 Assignment of Contracting Officer's Representative Revised 7/2022
- 4 Communications with Vendors Revised 7/2023
- 5 Contract Modifications Revised ~~4/2022~~10/2023
- 6 Novations and Change-of-Name Agreements Revised 9/2021
- 7 Contract Files Revised 7/2023

B Special Contract Administration Actions for Products, Services, and Construction Added 9/2020

- 1 Use of Government Excess Equipment Revised 9/2020
- 2 Suspension and Stop-Work Orders Revised 9/2021
- 3 Conversion of FAR Contracts to AMS Revised 9/2020
- 4 Contract Closeout Revised 9/2021
- 5 Final Indirect Cost Rates Revised 9/2021
- 6 Contract Audit Revised 9/2020
- 7 Bankruptcy Revised 9/2020
- 8 Reporting Executive Compensation and First-Tier Subcontract Awards Revised 7/2023
- 9 Contractor Performance Assessment Reporting Revised ~~7/2023~~10/2023

C Special Contract Administration Actions for Real Property Added 9/2020

- 1 Real Estate Asset Management Added 9/2020
- 2 Inspection and Acceptance Added 9/2020

D Clauses Revised 9/2020

E Procurement Forms Revised 9/2021

F Procurement Samples Revised 9/2021

G Procurement Templates Revised 7/2022

H Procurement Tools and Resources Revised 7/2023

I Appendices Revised 9/2021

- 1 Appendix - When Should a COR be Appointed Revised 9/2021
 - 2 Appendix - Guide for Creating and Maintaining Contract Administration Files for Supplies, Services, or Construction Revised 7/2022
-

T3.10.1 Contract Administration Revised 1/2009

A General Contract Administration Revised 9/2020

1 Contract Management Revised 9/2021

- a. Contracts are managed to ensure FAA receives a specific product or service or real property in a timely manner. In certain circumstances, a modification to contractual requirements, with or without consideration from the contractor, may be in FAA's best interest. If such a situation arises, the Contracting Officer (CO) documents the circumstances. When the CO intends to substantially alter the obligations of the parties without consideration, the CO first obtains concurrence from legal counsel and the Chief of the Contracting Office (COCO) before execution, and must document the rationale.
- b. The Appendices to this guidance include memoranda, letters, and agreements used for contract administration actions described in this section. The stop work order, novation, and change of name agreement in the Appendices may be modified by the CO, subject to legal counsel's concurrence.
- c. Use of AMS contract file content checklists is mandatory; these checklists are in FAST under Procurement Checklists.

2 Basic Responsibility for Contract Administration Revised 7/2012

COs are responsible for administering contracts covered by AMS. This is accomplished through a team effort with the program office, and working through the Contracting Officer's Representative (COR) and other functional specialists supporting a program.

3 Assignment of Contracting Officer's Representative Revised 7/2022

- a. *Nominating Contracting Officer's Representative (COR).* A COR is typically nominated using the COR Nomination Form located in Procurement Templates by the service organization or other management official from the requiring service organization. The CO may appoint an individual to act as his/her representative to facilitate contract administration. A COR resolves technical issues, gives technical direction to the contractor, and interprets technical processes and procedures for the CO. Other functions include interpreting technical requirements; assisting with the acquisition strategy; assisting with or developing the statement of work or requirements; preparing Government cost estimates; assisting in negotiation of costs or price of technical requirements; monitoring and evaluating contractor or vendor performance; reviewing and accepting services, supplies, and equipment; reconciling invoices and recommending payments.

Requiring organizations should ensure the person recommended as COR has qualifications and expertise appropriate for the nature of the contract and duties to be delegated. The CO appoints a representative by execution of a COR Delegation Memorandum (see AMS Procurement Templates for COR Delegation Memorandum or Real Property Templates and Samples for COR Delegation Memorandum For Real Property) describing specific delegated authority and responsibilities. The Memorandum is provided by the CO to the COR at the time the appointment is made or changed in any way. The COR must sign the COR Delegation Memorandum to acknowledge completion of mandatory COR training or that it will be completed within six months of the CO's delegation of duties. Once executed by the COR, the COR Nomination Form and the COR Delegation Memorandum must be retained in the official contract file. (See the AMS COR Handbook, found on the FAST website under Procurement Tools and Resources, for additional information about COR duties).

- b. *Basic Training and Biennial Refresher Training Requirements.* See AMS Policy Section 5, Acquisition Career Program, for complete training requirements.

- (1) The designated COR must meet the initial training requirement for certification by completing the designated hours of COR training. The required training is established as a three level certification program. Training and certification for Levels I and II will be completed prior to appointment. Level III certification must be completed no later than six months after appointment. Training may be completed online or in a classroom. Information regarding online and classroom training providers can be obtained from the Acquisition Career Management Office (AAP-300).

- (2) The COR must provide documentation showing certification or a waiver to the CO.

- c. *Authority of the COR.* A duly-assigned COR is authorized to perform the actions delegated by the CO in a COR Delegation Memorandum. When determining the support needed from a representative, the CO should consider the specific requirements and needs of the contract and clearly specify the authority that he/she is granting to the representative in the Memorandum. One COR Delegation Memorandum for all situations may not be appropriate because contractual situations are distinct and have varying needs. The Memorandum may be modified to reflect the specific needs of the contract and CO. Depending on the scope, duration, complexity and aggregate total estimated potential value of the contract, a COR may not be required.
- d. *Changing the Contracting Officer's Representative.* To change the representative on a contract, the CO must revoke the previous delegation and issue a succeeding delegation to another representative. Both actions are in writing and issued concurrently. The CO must forward copies of COR changes to the Acquisition Career Management Team (AAP-300), as they occur.

- e. *Notifying the Contractor.* The CO furnishes copies of the COR Delegation Memorandum and revocation memoranda to the contractor so that they are aware of the representative and his or her authority and responsibilities.

4 Communications with Vendors Revised 7/2023

Teamwork is an important element for successful contract performance. COs should establish good working relationships with vendors, and regular communication helps build this relationship. Post award conferences, either in person or by telephone, are one means to establish communication and lay the foundation for teamwork at the start of contract performance. The COR may participate in post award conferences and address, among other things, Operational Risk Management (ORM), which is particularly important where contractors are working on NAS facilities. Where vendors' work may pose operational risks to the NAS, the COR may present the short Operational Risk Management (ORM) orientation video the FAA has posted at <https://www.youtube.com/watch?v=yyq9ESQ8vds>. The video provides an overview on how FAA facilities are interconnected and the criticality of the work performed on NAS facilities, along with some ORM practices.

After performance has begun, recurring communication ensures everyone working under the contract understands the objectives and is focused on a common goal, and that any potential problems or schedule difficulties are identified and addressed before adversely impacting FAA or the contractor. Communication with the vendor and internal stakeholders (i.e. legal and/or service organization) is particularly essential when the following occur: at the beginning of contract performance; whenever either party detects a problem; and before and after significant milestones. However, communication between FAA and the contractor should occur routinely even when no problems may be encountered.

5 Contract Modifications Revised 4/202210/2023

a. Contract Modifications for Products, Services, and Construction

- (1) *Authority.* Only a CO or person delegated specific authority to execute contract modifications for products, services (including real property related services), and construction contracts, may execute contract modifications.

- (2) *Ceiling-Priced Modifications.*

- (a) Contract modifications should be priced before execution, if this can be done without adversely affecting FAA's interests. If a ceiling-priced modification is entered into authorizing the contractor to start performance before final agreement on the modification's price, the CO must include in the modification:

- 1) All requirements for performance or delivery;

- 2) The contract type, maximum price or cost to be negotiated, FAA's maximum liability pending definitization and a provision permitting the CO to determine a reasonable price or cost (subject to the disputes provisions); and
- 3) A definitization schedule with dates for submission of the contractor's price proposal, required cost or pricing data, make-or-buy and subcontracting plans if required, a date for starting negotiations, and a target date for definitization. The definitization should be completed within 180 days after the date of the ceiling- priced modification or before completion of 40% of the work to be performed, whichever occurs first.

(b) If agreement on the modification's price is not reached by the target date or within any extension of it granted by the CO, the CO may, with approval of the Chief of the Contracting Office, determine a reasonable price or fee, subject to contractor appeal as provided in the "Contract Disputes" clause. In any event, the contractor must proceed with completion of the contract, subject only to the "Limitation of FAA Liability" clause.

(3) *Types of Contract Modifications.* Contract modifications fall into the following categories (see AMS Common Authorities for Modifications for Supplies, Services, or Construction in Procurement Tools and Resources for a detailed description of the types of modifications and associated authorities for modifying contracts):

(a) *Bilateral.* A bilateral modification is a contract modification jointly agreed to by a CO and contractor. The contractor's oral or written agreement is sufficient to indicate contractor agreement; however the CO must obtain the contractor's written agreement, within a reasonable period of time, in the form of a bilateral contract modification following the oral agreement. Bilateral modifications are used to:

- 1) Make negotiated equitable adjustments when necessary;
- 2) Definitize letter and ceiling-priced contracts;
- 3) Reflect other agreements of the parties which modify the terms of contracts; or

4) Make changes requested by the contractor.

(b) *Unilateral*. A unilateral modification is a contract modification made by the CO, without advance concurrence by the Contractor. Unilateral modifications are used, for example, to:

- 1) Make administrative changes;
- 2) Issue changes under the Changes clause; or
- 3) Make changes authorized by clauses other than a Changes clause (e.g., Property clause, Options clause, Differing Site Conditions clause, etc.);and
- 4) Issue termination notices.

(c) *Unilateral Changes Required By Law*. The CO may make a unilateral modification as required by statute, executive order, regulation, or other legal authority when the contract includes AMS clause 3.10.1-28 “Changes Required by Law.”

1) *Applicability*. When statute, executive order, regulation, or other legal authority requires that the FAA modify existing contracts, the Acquisition Policy Group, AAP-100, will incorporate that legal requirement into the Acquisition Management System. When a contract includes AMS clause 3.10.1-28 “Changes Required by Law,” the CO may reference that clause as contractual authority to unilaterally modify the contract as required by the legal authority, in accordance with the corresponding AMS provision.

2) *Roles and Responsibilities*. COs must insert AMS clause 3.10.1-28 “Changes Required by Law” in new SIRs and resulting contracts. The CO has the discretion to incorporate the clause into existing contracts via bilateral modification.

(4) *Extension of Contracts*.

(a) *Before Expiration*. The CO may extend a contract before it expires, using a bilateral contract modification. However, contract extensions may constitute a single source procurement, and as such, become subject to requirements for single source justification and approval. When considering a contract extension, the CO

will first determine, in consultation with legal counsel, if the extension constitutes new work. If so, the CO must comply with single source requirements in AMS policy 3.2.2.4 for market analysis, documentation, and approval.

(b) *After Expiration.* The CO must **not** extend a contract after it has expired.

b. Supplemental Agreements

(1) *Authority.* Only a CO or person delegated specific authority may execute supplemental agreements for real property contracts. Real property contracts include but are not limited to leases, easements, memorandum of agreements, permits, and licenses.

(2) *Supplemental Agreement Requirements.*

(a) All modifications to the existing requirements must be within the scope of the real property contract (e.g., the requirements the lessor has to perform on the lease).

(b) For leases, no supplemental agreement may extend the term beyond twenty (20) years unless approved by the Office of Chief Counsel, Field Operations, Acquisition and Real Estate. This restriction does not apply to no-cost leases.

(3) *Mandatory Use of Supplemental Agreements.* The CO **must** use a supplemental agreement for modifications to existing real property contract requirements to:

(a) Document changes in ownership;

(b) Exercise an option provided within a lease/easement, (e.g. renewal);

(c) Exercise a contractual authority under contract terms or clauses (e.g., early termination, reduction in space, etc.);

(d) Extend the term of a lease, easement, or other real property interest prior to expiration; and/or

(e) Change or modify any aspect of the real property contract.

(4) *Types of Supplemental Agreements.* Supplemental agreements fall into the following categories:

(a) *Unilateral.* A unilateral supplemental agreement is executed only by the CO, and consent of the vendor is not required. The following are examples where

unilateral supplemental agreements are appropriate:

- 1) Exercising a lease renewal option where the price and all other terms of the option have been previously negotiated and agreed upon in the lease;
- 2) Exercising a termination right in accordance with the cancellation clause in a contract for a real property interest;
- 3) To document a change in rent previously agreed to in the real property contract that requires an event in the future in order to determine the rent change, e.g. the operating cost escalation clause or tax adjustment clause; or
- 4) To document a change in ownership where the CO has supporting documentation in the real estate file provided by the new owner.

(b) *Bilateral*. A bilateral supplemental agreement is one that must be signed by the CO and the vendor. Any changes to the contract not previously negotiated and agreed to in the contract require a bilateral supplemental agreement. The following are examples where bilateral supplemental agreements are required:

- 1) To identify or change the rent commencement date;
- 2) To modify square footage and associated rent based on actual measurement upon acceptance of the space for FAA occupancy;
- 3) Extending the lease term; and
- 4) Terminating a lease that does not contain termination rights.

(5) *Extension of Contracts*.

(a) *Before Expiration*. The CO may extend a contract before it expires, using a bilateral contract modification. However, contract extensions may constitute a single source procurement, and as such, become subject to requirements for single source justification and approval. When considering a contract extension, the CO will first determine, in consultation with legal counsel, if the extension constitutes new work. If so, the CO must comply with single source requirements in AMS policy 3.2.2.4 for market analysis, documentation, and approval.

(b) *After Expiration*. The CO must **not** extend a contract after it has expired.

6 Novations and Change-of-Name Agreements Revised 9/2021

a. *Novation.*

- 1) Novation is a legal instrument executed by the contractor (transferor), the successor in interest (transferee) and the Government by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets. Novations typically occur when the assets of the transferor are purchased by another company but may also be considered when a contractor is unable to perform and another viable contractor is willing to assume the original contractor's rights and duties under the contract.
- 2) When in its best interest, FAA may recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of:
 - (a) All of the contractor's assets; or
 - (b) The entire portion of the assets involved in performing the contract. Examples of such transactions include, but are not limited to:
 - (i) Sale of the contractor's assets with a provision for assuming liabilities;
 - (ii) Transfer of the contractor's assets incident to a merger or corporate consolidation; and
 - (iii) Incorporation of a proprietorship or partnership, or formation of a partnership.
- 3) A novation agreement may not be necessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government.
- 4) *Contractor (Transferor) Responsibilities.* Contractors requesting a novation of a contract to recognize a successor in interest must provide the information the CO needs to evaluate and process the novation request. This includes information that validates that novation of the contract is in the best interest of FAA and should include:

- (a) Three copies of the proposed novation agreement (see "Paragraph (7) Content of Novation Agreement") signed by the original contractor and the successor in interest;
- (b) One copy each, as applicable, of the following:
 - (i) The document describing the proposed transaction, purchase/sale agreement or memorandum of understanding;
 - (ii) A list of all affected contracts between the transferor and FAA, as of the date of sale or transfer of assets, showing for each, as of that date, the
 - a. Contract number and type;
 - b. Name and address of the contracting office;
 - c. Total dollar value, as amended; and
 - d. Approximate remaining unpaid balance;
 - (iii) Evidence of the transferee's capability to perform;
- (c) Any other relevant information requested by the CO;
- (d) One copy of each of the following documents, as applicable, as the documents become available except as provided in (5) below:
 - (i) An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree;
 - (ii) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets;
 - (iii) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets;
 - (iv) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts;
 - (v) The opinion of legal counsel for the transferor and transferee stating that the

transfer was properly effected under applicable law and the effective date of transfer;

Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants;

(vi) Evidence that any security clearance requirements have been met;

(vii) The consent of sureties on all contracts listed under (4)(b)(ii) of this section if bonds are required, or a statement from the transferor that none are required.

5) The CO may modify this list of documents, provided that the CO receives information sufficient to protect the Government's interest.

6) *CO Responsibilities*. The CO has the primary responsibility to process the novation and determine, in consultation with legal counsel, if it is in the best interest of FAA.

(a) *Novations Involving More Than One Contract*. When multiple contracts are involved, the CO administering the contract with the largest unpaid dollar balance should coordinate the novation agreement for all FAA contracts.

(b) *Coordination with Other Executive Agencies*. The FAA may elect to have its contracts included in the novation agreement (the "global agreement") being processed by the responsible contracting officer for all of the other executive agencies. If this election is made, the FAA CO should negotiate a separate advance agreement with the contractor that addresses any issues unique to the FAA, if appropriate. This agreement should be attached to and incorporated in the global novation agreement.

(c) *Evaluating the Novation Request*. The CO should consider all the information collected as a result of the proposed novation request with emphasis on the successor's ability to perform including:

(i) Contractor submissions under (5) above;

(ii) Information provided by other contracting offices;

(iii) Information indicative of the successor's responsibility such as debarment and suspension information;

(iv) National Institute of Health's Past Performance Database;

(v) Organizational conflict of interest;

Any other information that reflects the successor's ability to perform the contract.

- (d) *Conflict of Interest (COI)*. If the CO determines that a COI exists and cannot be resolved, but the novation is in the best interest of FAA, the CO may initiate action to waive or mitigate the COI in accordance with AMS Procurement Guidance T.3.1.7.
- (e) Coordinate the action with legal counsel to assure legal sufficiency.
- (f) CO's Decision.
 - (i) *Rejecting the Novation Request*. If the CO determines that it is not in the best interest of the FAA to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for reasons of default, should the original contractor not perform.
 - (ii) *Executing the Novation*. If the CO approves the novation, he/she should:
 - a. Prepare and sign a written contract modification for each affected contract;
 - b. Incorporate a copy of the agreement into the contract modification;
 - c. Place the original contract modification in the official contract file;
 - d. Distribute the modification to the transferor; the transferee, affected FAA contracting offices, the paying office and any other distribution that is required for contract modifications.

7) *Content of the Novation Agreement*. A sample Novation Agreement is located in Procurement Samples provides a guide to preparing novation agreements. This may be adapted, subject to legal counsel's review, to fit specific cases, but should include the following provisions:

- (a) Successor contractor/transferee responsibilities;
- (b) The transferee assumes all the transferor's obligations under the contract;
- (c) The transferor waives all rights under the contract against the Government;
- (d) The transferor guarantees performance of the contract by the transferee (a satisfactory

performance bond may be accepted instead of the guarantee); and

- (e) A statement that nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.
- 8) Any separate agreement between the transferor and the transferee regarding assumption of liabilities (e.g., an Advance Agreement covering the treatment of long-term incentive compensation plans, cost accounting standards noncompliance issues, environmental cleanup costs, final overhead costs) and any other issues should be incorporated in the novation agreement.

b. *Change of Name Agreements.* A change of name agreement is appropriate when only the contractor's name changes and the rights and obligations of the parties are not affected.

1) *Contractor's Responsibilities.* The contractor should submit the following to the CO:

- (a) A written request to the CO to change the name;
- (b) The document effecting the name change, authenticated by a proper official of the State having jurisdiction;
- (c) The opinion of the contractor's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date;
- (d) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The CO may request the total dollar value as amended and the remaining unpaid balance for each contract.

2) *CO's Responsibilities.* The CO will then prepare a contract modification in the new name of the firm, and reference in the body of the modification the former name and date of the vendor's request. The modification should state something similar to: "This modification changes the name of the Contractor from *[enter contractor's previous name]* to that shown above. This change is made at the request of the Contractor received on *[insert date]*."

3) A format for a Change of Name Agreement is located in Procurement Samples

7 Contract Files Revised 7/2023

a. *Contract Files for Products, Services, or Construction.*

- (1) The files containing records of all contractual actions should be maintained by the organization or person administering the contract. Documentation in the files should be a complete history of the transaction and:
 - (a) Provide a complete background as a basis for informed decisions at each stage in the acquisition process;
 - (b) Support actions taken;
 - (c) Provide information for reviews and investigations; and
 - (d) Furnish essential facts in the event of litigation or Congressional inquiries.
- (2) A contract file should consist of the following:
 - (a) Contracting office documentation of the acquisition, basis for award, assignment of contract administration if applicable (including payment responsibilities), and any subsequent actions taken by the contracting office;
 - (b) Contract administration files that document actions reflecting the basis for and the performance of contract administration responsibilities;
 - (c) Government-furnished/contractor-acquired property file; and
 - (d) For contracts not subject to AMS T3.3.1A.15 Electronic Payment Requests (eInvoicing), paying office contract file, which documents actions prerequisite to, substantiating, and reflecting contract payments.
 - (e) Contract file checklists require signatures by the CO and procurement branch or division manager for major program contracts. If signature of the checklist is not possible, email messages from the CO and procurement branch or division manager attesting to the completeness of the contract file may be substituted.
- (3) The contract files that contain proprietary or source selection information should be identified as such and protected from disclosure to unauthorized persons.
- (4) A guide describing creation and maintenance of contract administration files is in Appendix 2 to this Guidance.
- (5) File content checklists for contracts, purchase orders/FSS orders, blanket purchase

agreements, and agreements are in the Procurement Checklists area of FAST. These checklists will assist in organizing the file and ensuring that required clearances and documents are properly filed. The CO must use and incorporate the following checklists in applicable files:

- (a) Blanket Purchase Agreement (BPA) File Checklist
- (b) Construction File Checklist
- (c) Contract File Checklist
- (d) Delivery Order/Task Order/Blanket Purchase Agreement Call Checklist
- (e) Grants Checklist
- (f) Interagency Agreement Checklist
- (g) Other Transaction Agreement Checklist
- (h) Purchase Order/GSA/FSS Order File Checklist*

* Note: Checklist not required for orders with a TEPV not exceeding the micro-purchase threshold.

b. *Contract Files for Real Property.*

(1) Documentation to the Contract File

Sufficient documentation must be developed to explain and justify the real property acquisition action taken. COs must use the appropriate checklists to ensure the adequacy of contract clauses and to ensure required documentation is in the file. COs must use a 6 part folder for all real property acquisition files.

(2) Life Safety Compliance/Seismic

Life Safety Compliance and/or Seismic Certifications must be included in the contract file. The CO must ensure that the original signed certification(s) or applicable update is placed in any new or succeeding contract file and that a copy is kept in the previous contract file.

(3) Utility Documentation

- (a) The CO must use the utility checklist when assembling the utility file. The checklist must be filled in completely.
- (b) If a required item is listed in the checklist but is not applicable, the CO must place a N/A and a note in the file stating why it is not applicable.
- (c) The CO establishes and maintains hard copy records of the utility contract, purchase order or state utility contract.
- (d) The permanent file for each facility must remain active for the life of the facility and contain all supporting documents pertaining to the utility contract activity.
- (e) Cos must use a 6-part folder system for all their utility acquisition files.

B Special Contract Administration Actions for Products, Services, and Construction Added 9/2020

1 Use of Government Excess Equipment Revised 9/2020

The CO may authorize a cost reimbursement contractor to use excess FAA or DOT equipment, if a good business decision. The FAA Property Management organization makes arrangements for excess property upon written request by the contractor and approval by the CO. When FAA provides excess property to contractors, appropriate AMS property clauses must be part of the contract.

2 Suspension and Stop-Work Orders Revised 9/2021

a. General.

- (1) Suspensions of work or stop-work orders are tools available to the Government to interrupt the contractor's work in appropriate situations. (See "Stop Work Order" in Procurement Templates on the FAST website). The CO should assure the appropriate clauses governing stop work and suspensions of work are in all contracts.
- (2) The CO's suspension or stop work order should be in writing and include information required by the clauses, such as:
 - (a) A description of the work to be suspended/stopped;
 - (b) Instructions concerning the contractor's issuance of further orders for

materials or services;

(c) Guidance to the contractor on action to be taken on any affected subcontracts;
and

(d) Other suggestions for minimizing the contractor's costs.

(3) If either the suspension or stop work is used, the interruption of work should not be for an unreasonable length of time. Also, the CO should work with the program official, legal counsel, and others supporting the program, to resolve the outstanding issues, and make a decision to terminate the contract, cancel the suspension or stop work order, or continue the suspension or stop-work order while the issues are being resolved.

b. *Suspensions.*

(1) Suspensions may be used in fixed-price construction or architect-engineer contracts in situations such as:

(a) Delays caused by waiting for a decision from FAA;

(b) Weather-related reasons;

(c) Technological advancement;

(d) Production or engineering breakthroughs;

(e) Realignment of FAA programs or objectives;

(f) Public safety concerns;

(g) Emergency situations or other urgent conditions;

(h) Differing site conditions; or

(i) Violation of substantive contract terms, including FAA's smoking, harassment-free workplace, or other policies.

(2) Generally, the decision to suspend work should be made jointly by the CO and program official. However, in cases of public safety concerns, emergency situations, or other urgent conditions, the CO may:

- (a) Suspend work pending discussion with the program official;
- (b) Notify the contractor orally and follow-up immediately with a written notice.
- c. *Stop work Orders.* Stop work orders may be considered in supply, service or research and development contracts when the work must be interrupted pending a decision by the Government.

3 Conversion of FAR Contracts to AMS Revised 9/2020

- a. Contracts awarded under the Federal Acquisition Regulations (FAR) system are not automatically converted to AMS contracts. The CO, jointly with the program official and legal counsel, should consider the merits of converting existing FAR contracts to AMS. Circumstances where conversion may benefit both FAA and contractors include contracts with:
 - (1) A potential for litigation (to include clause 3.9.1-1 Contract Disputes);
 - (2) A significant term or delivery schedule remaining;
 - (3) Potential of new work being added to the existing contract; or
 - (4) One or more options.
- b. The above list is not all-inclusive. COs may consider other situations if they believe the conversion would be advantageous. Contracts near completion, relatively inactive, or the result of extensive negotiation of clauses may not need to be converted. In all cases, converting a contract from FAR to AMS, whether in whole or in part, requires legal counsel's review before bilateral signature of the parties.

4 Contract Closeout Revised 9/2021

- a. *Background.* Closeout of contract files occurs at the end of the contract administration process. The CO should assure file integrity throughout the life of the contract. Maintaining an accurate record of contract modifications and obligations facilitates contract closeout, and also minimizes costs associated with administration and closeout processes. Timely closeout de-obligates excess funds and returns the excess funds for possible use elsewhere. The time frame for closing a contract is based on both the type of contract and date of physical completion. AMS Guidance regarding both Records Retention and Electronic Contract Files also applies.
- b. *Definitions.*

(1) A contract is considered to be physically complete when:

- (a) The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;
- (b) The contractor has performed all services and the Government has accepted the services;
- (c) All option provisions, if any, have expired; and
- (d) The Government has given the contractor a notice of complete contract termination.

(2) A purchase order, or delivery order against a Federal Supply Schedule contract, is considered physically complete when:

- (a) Property or services have been received within the terms of the contract;
- (b) Final payment has been made to the contractor; and
- (c) The recipient acknowledges acceptance of the goods/services in Procurement System (applicable only when 3-way matching is used per AMS Invoice Guidance).

c. Time Frames. Closeout of contract files should occur during the time frames identified below, as evidenced by completion of the "Contract Closeout Checklist and Completion Statement" (See Procurement Templates on the FAST Website). Closeout in Procurement System is required for all contracts, purchase orders, and delivery/task orders.

- (1) Files for contracts using commercial and simplified purchase procedures must be closed out upon final payment.
- (2) Contract files for firm-fixed-price contracts, other than those using commercial and simplified purchase procedures, must be closed out within 6 months after the date on which the CO receives evidence of physical completion (for example, signed receipt or delivered product).
- (3) Contract files for contracts requiring settlement of indirect cost rates must be closed out within 36 months of the month in which the CO receives evidence of physical completion.
- (4) Contract files for all other contracts must be closed out within 20 months of the month in

which the CO receives evidence of physical completion.

- (5) All delivery/task orders must be individually closed out within the time frame established for the basic contract as specified in subsections (2), (3), or (4) above. The time frame for the delivery/task order begins when the CO receives evidence of physical completion of the delivery/task order.

d. Preparation for Closeout. To prepare for contract closeout, 60 days prior to either final delivery or estimated contract or interagency agreement completion date, the CO should perform a comprehensive review of the contract or interagency agreement to determine whether any documentation is missing and whether any step in the closeout process can be initiated before physical completion. If documents are missing, the CO should attempt to obtain them in a timely manner and insert them into the file. To determine whether steps in the closeout process can begin before the contract or interagency agreement is physically complete, the CO should review the "Contract Closeout Checklist and Completion Statement." Following are examples of actions the CO may be able to take before the contract is physically complete:

- (1) Ensure the contractor has a current list of contractor employees holding FAA security badges and verify that the list corresponds to the Office of Personnel Security's (AXP) list.
- (2) Ensure all information in Procurement System is current and correct.
- (3) Reconcile the contract's funding status and invoice payment log with Accounts Payable. Identify final invoices. (Contracts and Interagency Agreements).
- (4) If the contract includes a "Patent Rights" clause, check to see whether final patent or royalty reports have been received.
- (5) If the contract includes "Government Property" clauses or contractor-acquired property, ensure that the property administrator or Contracting Officer's Representative provides disposition instructions to the Contractor. (Contracts and Interagency Agreement).

e. Closeout Procedures. When the contract or interagency agreement is physically complete, the CO is responsible for initiating contract closeout. The contract file should not be closed if the contract is in litigation or under appeal. When closing both fixed-price and cost-type contracts, the CO must verify the documents and activities included in the "Contract Closeout Checklist and Completion Statement" have been received or are complete. After completion of the closeout checklist and notification of final payment from Accounts Payable, the CO must complete and sign the completion statement in the Contract Closeout Checklist and Completion Statement template located in Procurement Templates. For purchase orders (PO) or GSA Federal Supply Schedule

(FSS) orders, the CO will use the closeout portion of the "Purchase Order/GSA/FSS Order File Checklist" in place of the Contract Closeout Checklist and Completion Statement. To facilitate receipt of required closeout documentation, the CO will need to take some or all of the following actions:

- (1) Reconcile the contract's funding status and invoice payment log with Accounts Payable. To accomplish this, contact the Finance Office and obtain reports documenting the obligations and expenditures under the contract.
- (2) Send a memorandum to the program official to confirm contract completion.
- (3) Send a memorandum to the COR requesting termination of all contractor personnel accounts on contract-specific FAA systems. The COR should return the signed memo to the CO within 30 days. For contractor employees transferring to a follow-on contract for the same services, the CO must notify AXP of all employee transfers in order to retain such contractor accounts.
- (4) For all cost-type contracts not closed with Quick Closeout procedures, the CO must request the Headquarters Cost/Price Analysis Services group (AAP-500) to initiate a DCAA audit.
- (5) Send a memorandum to the Property Administrator requesting completion and transfer of the Government Property section of the contract file. (Note: the CO must sign the property report submitted by the Property Administrator).
- (6) Send a letter to the contractor indicating that the contract is complete and requesting required documents. Required documents might include:
 - (a) Final voucher.
 - (b) Confirmation of settlement of subcontracts.
 - (c) Government Furnished Property (GFP) and Contractor Acquired Property (CAP) inventory.
 - (d) Report of inventions and subcontracts, if applicable (AMS Clause 3.5-12).
 - (e) Patent and royalty reports.
 - (f) Contractor's release.

- (g) Contractor's assignment of refunds, rebates, credits, and other amounts.
 - (h) List of contractor personnel holding FAA badges, indicating the badge numbers and when they were returned to AXP.
- (7) Review and approval of the final voucher should include:
- (a) Verification that all contractual requirements have been satisfied.
 - (b) Completion of any fee adjustments.
 - (c) Verification that contractual funding limitations have not been exceeded.
 - (d) Identification of any offsets applied.
 - (e) Verification of accuracy of Contractor Release and Assignment.
 - (f) Verification that all previous Contractor vouchers have been paid.
 - (g) Approval for payment with signature and date.
 - (h) De-obligation modification processed and distributed for any funds determined to be in excess.
- (8) Completion and submittal of the Contractor Performance Assessment Reporting System (CPARS) evaluation for the contract.
- (9) Closeout in Procurement System.

f. Quick-closeout Procedures. In some circumstances, the CO may determine that a contract is a candidate for quick closeout. Quick closeout allows the CO to negotiate the settlement of indirect costs without a DCAA audit and in advance of the determination of final indirect cost rates. The procedures for quick closeout are the same as for regular closeout except that a DCAA audit is not requested. The determinations of final indirect costs under quick closeout procedures are final for the contracts it covers and no adjustments are made to other contracts for over or under recoveries of costs allocated or allocable to the contracts covered by the advance agreement. Additionally, indirect cost rates used in the quick closeout of a contract are not considered a binding precedent when establishing the final indirect cost rates for other contracts.

- (1) To determine whether a contract is a candidate for quick closeout, the contract must meet

the following criteria:

- (a) The contract is physically complete;
 - (b) The amount of unsettled indirect costs is not more than \$5,000,000 and the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15% of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year; and
 - (c) Agreement can be reached on a reasonable estimate of allocable dollars.
- (2) After the CO has made a decision that the use of quick closeout procedures is appropriate, the CO must:
- (a) Ensure adequate rationale for the decision is included in the file;
 - (b) Require the contractor to submit a final voucher and a summary of all costs by cost element and fiscal year for the contract(s) in question, as well as a copy of the contractor's final indirect cost rate proposal for each fiscal year quick closeout is involved;
 - (c) Notify the cognizant audit activity, either verbally or in writing, identify the contract(s), and request:
 - (i) The contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and
 - (ii) Any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information.
 - (d) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information;
 - (e) Establish final indirect cost rates using one of the following rates:
 - (i) The contract's ceiling indirect cost rates, if applicable, and if less than paragraphs (e)(ii) through (vi) of this section;
 - (ii) The contractor's claimed actual rates adjusted based on the contractor's

indirect cost history, if less than paragraphs (e)(iii) through (vi) of this section;

(iii) Recommended rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source;

(iv) The contractor's negotiated billing rates, if less than paragraphs (e)(v) or (vi) of this section;

(v) The previous year's final rates;

(vi) Final rates for another fiscal year closest to the period for which quick-closeout rates are being established;

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.

g. De-obligation of Funds Prior to Closeout.

(1) *Actions Before De-obligation.* For contracts that require the establishment of final cost rates, after completion of contractor performance the CO may de-obligate unused funding prior to the finalization of the contractor's final cost rates. Prior to de-obligating unused funding, the CO must:

(a) Confirm contractor performance, including any applicable closeout requirement, is complete except for the establishment of final rates; and

(b) Receive written authorization from the funding program office that the funds may be de-obligated (a purchase request requesting the de-obligation of funds satisfies this requirement).

(2) *Reconciliation.* After establishing the contractor's final cost rates, FAA will reconcile the final funding requirement.

(a) If the contract funding required after establishment of final cost rates is greater than the amount established prior to the agreement on final cost rates, the FAA program office will provide the necessary additional appropriation and funding, and the CO will modify the contract to increase the final funding amount.

(b) If the contract funding required after establishment of final cost rates is lower than

the amount established prior to the agreement on final cost rates, the CO will further lower the final contract funding amount and the contractor will pay FAA the amount of overpayment within 60 days of written demand from FAA, or FAA may offset any overpayment from other amounts owed to the contractor. The FAA retains all other rights to collect funds due from the contractor.

h. Contract File Documentation. Official closeout documentation for contracts and interagency agreements, the signed and completed "Contract Closeout Checklist and Completion Statement" should be filed in the official contract file behind a marked tab. For POs or GSA FSS orders, the documentation should be filed in the official file and noted on the "Purchase Order/GSA/FSS Order File Checklist."

5 Final Indirect Cost Rates Revised 9/2021

a. *Cognizant Federal Agency.* A contractor (or its operating divisions) may do business with more than one Federal agency. To avoid inconsistent or duplicated activities, one agency is designated as the cognizant agency for settling the final indirect cost rates with the contractor. The cognizant agency, which could be FAA, is normally the one with the largest dollar amount of negotiated contracts, including options. Once an agency assumes cognizance, it should remain so for at least five years to ensure continuity and ease of administration. If at the end of the five-year period another agency has the largest dollar amount of negotiated contracts, including options, then the two agencies should coordinate and determine which will assume cognizance. However, cognizance may transfer before the five-year period expires if circumstances warrant it and the affected agencies agree.

b. Billing Rates.

- (1) A billing rate is an indirect cost rate established temporarily for interim reimbursement of incurred indirect costs, and is adjusted as necessary pending establishment of final indirect cost rates.
- (2) The cognizant Contracting Officer (CO) (or cognizant Federal agency official) or auditor responsible for establishing the final indirect cost rates is also responsible for determining the billing rates.
- (3) The cognizant CO (or cognizant Federal agency official) or auditor establishes billing rates based on information from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. In establishing billing rates, the cognizant CO (or cognizant Federal agency official) or auditor should ensure billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal

period, as adjusted for any unallowable costs. When the cognizant CO (or cognizant Federal agency official) or auditor determines the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

- (4) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the cognizant CO (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When the parties cannot agree, the cognizant CO (or cognizant Federal agency official) may unilaterally determine billing rates.
- (5) The elements of indirect cost and the base or bases used in computing billing rates must not be interpreted as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.
- (6) When the contractor provides the certified final indirect cost rate proposal to the cognizant CO, the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant CO/agency official or the auditor.

c. Reimbursing Indirect Costs. Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

d. Final Indirect Cost Rates.

- (1) Final indirect cost rates must be established on the basis of CO determination procedure or auditor determination procedure. Establishment of a business unit's final indirect cost rates provides uniformity of approach with a contractor when more than one contract or agency is involved; economy of administration; and timely settlement under cost-reimbursement contracts.
- (2) These rates are binding for all cost-reimbursement contracts for all agencies and their contracting offices, unless otherwise specifically prohibited by statute. An agency must not perform an audit of indirect cost rates when the CO determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any

other department or agency of the Federal Government.

- (3) Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.
- (4) Final indirect cost rates must be used for contract closeout for a business unit, unless the quick-closeout procedure in AMS Procurement Guidance T3.10.1.A.11.F is used.
- (5) Within 120 days (or longer period, if approved in writing by the CO) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and rates. To determine whether a period longer than 120 days is appropriate, the CO should consider whether there are extenuating circumstances, such as:
 - (a) Pending closeout of subcontracts awaiting Government audit.
 - (b) Pending contractor, subcontractor, or Government claims.
 - (c) Delays in the disposition of Government property.
 - (d) Delays in contract reconciliation.
 - (e) Any other pertinent factors.
- (6) If the contractor fails to submit a completion invoice or voucher within the time specified in subparagraph c.(2) of this section, the cognizant CO may determine the amounts due to the contractor under the contract, and document it in a unilateral modification to the contract.
- (7) The CO must coordinate a possible unilateral decision on final indirect rates and resolution efforts with Headquarters Procurement Legal Division, or Region or Center Assistant Chief Counsel's office, as applicable.

e. CO Determination Procedure.

- (1) The cognizant CO (or cognizant Federal agency official) is responsible for establishing the final indirect cost rates for:
 - (a) Business units of a multi-divisional corporation under the cognizance of a corporate

administrative contracting officer (ACO) with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.

- (b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.
 - (c) Educational institutions.
 - (d) State and local governments.
 - (e) Nonprofit organizations other than educational and state and local governments.
- (2) According to AMS clause 3.2.4-5 "Allowable Cost and Payment," the contractor must submit a certified final indirect cost rate proposal to the CO (or cognizant Federal agency official) and to the cognizant auditor. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, CO, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Each contractor must submit an adequate proposal to the CO (or cognizant Federal agency official) and auditor within the 180 day period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the CO. A contractor must support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 6 of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors, available on their website.
- (3) The auditor must submit to the cognizant CO (or cognizant Federal agency official) an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.
- (4) The cognizant CO (or cognizant Federal agency official) heads the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest must be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to

attend.

(5) The Government negotiating team must develop a negotiation position. The cognizant CO must:

- (a) Not resolve any questioned costs until obtaining adequate documentation on the costs and the contract auditor's opinion on the allowability of the costs; and
- (b) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(6) The cognizant CO:

- (a) Conducts negotiations;
- (b) Prepares a written indirect cost rate agreement conforming to the requirements of the contracts; and
- (c) Prepares, signs, and places in the contractor general file:
 - (i) The disposition of significant matters in the advisory audit report;
 - (ii) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;
 - (iii) Reasons why any recommendations of the auditor or other Government advisors were not followed;
 - (iv) Identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement;
 - (v) Promptly distribute resulting documents to include executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications, T3.10.1; and
 - (v) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

f. Auditor Determination Procedure.

(1) The cognizant Government auditor establishes final indirect cost rates for:

- (a) Business units of a multi-divisional corporation under the cognizance of a corporate ACO, with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.
- (b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.
- (c) For business units not included, the CO (or cognizant Federal agency official) will determine whether the rates will be CO or auditor determined.
- (d) Educational institutions.
- (e) State and local governments.
- (f) Non-profit organizations other than educational and state and local governments

The auditor determination may be used for business units that are covered when the CO (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

- (a) The business unit has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts.
- (b) The administrative cost of CO determination would exceed the expected benefits.
- (c) The business unit does not have a history of disputes and there are few cost problems.
- (d) The CO (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(2) Procedures.

- (a) The contractor must submit to the cognizant CO (or cognizant Federal agency official) and auditor a final indirect cost rate proposal.
- (b) Upon receipt of a proposal, the auditor:
 - (i) Audits the proposal and seeks agreement on indirect costs with the contractor;
 - (ii) Prepares an indirect cost rate agreement conforming to the requirements of the contracts. The agreement must be signed by the contractor and the auditor;
 - (iii) If agreement with the contractor is not reached, forwards the audit report to the CO (or cognizant Federal agency official) identified in the Federal Directory of Contract Administration Services Components, available on their website, who will then resolve the disagreement; and
 - (iv) Distributes Resulting Documents. Copies of the documented audit report prepared under auditor determination or audit report prepared under contractor determination must be furnished, as appropriate, to the contracting offices and Government audit offices.

g. Certification.

- (1) Certificate of Indirect Costs. A proposal must not be accepted and no agreement be made to establish final indirect cost rates unless the contractor certifies the costs.
 - (a) Waiver of Certification. The agency head, or designee, may waive the certification requirement when determined to be in the interest of the United States. The reasons for the determination documented in writing and made available to the public. A waiver may be appropriate for a contract with:
 - (i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization; and
 - (ii) A state or local government, educational institution, or nonprofit organization subject to OMB Guidance “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at <https://www.federalregister.gov/documents/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards> (“OMB Uniform Guidance”);

(b) Failure to certify.

(i) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the CO may unilaterally establish the rates.

(ii) Rates established unilaterally are based on audited historical data or other available data as long as unallowable costs are excluded; and set low enough to ensure that unallowable costs will not be reimbursed.

(c) False Certification. The CO should consult with legal counsel to determine appropriate action when a contractor's certificate of final indirect costs is thought to be false.

(d) Penalties for Unallowable Costs. Penalties for submission of unallowable costs in final indirect cost rate proposals are outlined in AMS clause 3.10.1-3.

6 Contract Audit Revised 9/2020

a. Contract Audit - Post Award.

(1) The auditor is responsible for:

(a) Submitting information and advice to the requesting activity, based on the auditor's analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs.

(b) Reviewing the financial and accounting aspects of the contractor's cost control system.

(c) Performing other analyses and reviews that require access to the contractor's financial and accounting records supporting proposed and incurred costs.

(2) *Audit Cognizance.* Normally, DCAA is the responsible Government audit agency. However, there may be instances where an agency other than DCAA desires cognizance of a particular contractor. In those instances, the two agencies should agree on the most efficient and economical approach to meet contract audit requirements.

(3) *Assigning Audit Services.* COs should coordinate with Headquarters Cost/Price Services (AAP-500) when requesting audit services directly from the responsible audit

agency. DCAA's audit office locator is online at <http://www.dcaa.mil>. The audit request should include a suspense date and should identify any information needed by the CO. The responsible audit agency may decline requests for services on a case-by-case basis, if resources of the audit agency are inadequate to accomplish the tasks. Declinations must be in writing.

7 Bankruptcy Revised 9/2020

- a. *General.* The CO must proactively monitor contracts to the extent practicable for indications of contractor financial difficulty, and respond appropriately to a written notification of bankruptcy. If the contractor provides the CO with a written notification of bankruptcy, the CO must protect FAA's rights and interests under contracts with the contractor.
- b. *Contractor Financial Difficulties.* When the CO becomes aware of contractor financial difficulties, he or she must verify accuracy of the information, and follow the steps described below. Information relating to contractor financial difficulties should come from sources such as, but not limited to, the COR, QRO, Finance Office, Office of Inspector General, a financial institution, Dun and Bradstreet, or a newspaper article.
 - (1) Determine whether the contractor is performing in a timely manner and making satisfactory progress.
 - (2) Consider terminating the contractor for default if performance is untimely or otherwise unsatisfactory and the reason is within the contractor's control.
 - (3) Request that the COR or QRO monitor the contract more closely if contract termination is considered unnecessary.
 - (4) Notify the cognizant small and disadvantaged business utilization specialist if a small business contractor is involved.
 - (5) Notify the bonding company, if appropriate.
- c. *Notification of Bankruptcy.* Upon receipt of a contractor notification of bankruptcy, as required by AMS clause 3.10.1-7, "Bankruptcy," the CO must:
 - (1) Furnish the notification of bankruptcy to Headquarters Assistant Chief Counsel for Procurement Law and other appropriate offices, such as finance, property, and other FAA contracting offices.

- (2) Determine the amount of FAA's potential claim against the contractor. In assessing this impact, identify and review any contracts that have not been closed out, including those that are physically completed or terminated.
- (3) Take actions necessary to protect FAA's rights and interests, including Government property.
- (4) Consult with and furnish information to Headquarters legal counsel, as appropriate, throughout the process.

8 Reporting Executive Compensation and First-Tier Subcontract Awards Revised 7/2023

- a. *Scope.* The Federal Funding Accountability and Transparency Act, as amended, requires contractors to report subcontracted award data and the total compensation of the five most highly compensated executives of the contractor and subcontractor(s).
- b. *Applicability.* This reporting requirement applies to all contracts with a value of \$30,000 or more. Reporting subcontract information is limited to the first-tier subcontractor(s). As described in AMS clause 3.13-14, there is an additional subcontract reporting exemption for contractors and subcontractors who had gross income in the previous tax year under \$300,000. Specific reporting requirements for executive compensation are also outlined in AMS clause 3.13-14.
- c. *Review.* The CO will ensure contractors comply with the reporting requirements of AMS clause 3.13-14. Contractor reports will be reviewed as necessary to ensure the information is consistent with contract information. In such reviews, the CO is not required to address data for which FAA would not normally have supporting information, such as compensation information required of contractors and first-tier subcontractors. However, the CO will inform the contractor of any inconsistencies with the contract information and require that the contractor correct the report, or provide a reasonable explanation why it believes the information to be correct. The reports may be reviewed at <http://www.fsrs.gov>.
- d. *Failure to Comply.* If the contractor fails to comply with the reporting requirements, the CO will immediately bring this to the contractor's attention. If the contractor still does not comply, appropriate contractual remedies should be taken. In addition, the CO should make the contractor's failure to comply with the reporting requirements a part of the contractor's past performance evaluation.
- e. When COs report contracting data to the Federal Procurement Data System (FPDS), certain data will then pre-populate from FPDS to assist the contractor complete and submit the reports.

9 Contractor Performance Assessment Reporting Revised 7/202310/2023

- a. *Applicability.* This guidance applies to all SIRs and contracts that exceed the dollar value thresholds as specified in subsection b. *General*, subparagraph (3).
- b. *General.*
 - (1) This subsection establishes responsibilities for preparing, evaluating, and submitting contractor performance information in the Contractor Performance Assessment Reporting System (CPARS). This section does not apply to determinations of fees under award or incentive fee contracts.
 - (2) The FAA must monitor compliance with the past performance evaluation requirements (see Subsection b. *General*, Subparagraph (3)) and use the CPARS metric tools specified in the FAA CPARS Guide, located on the FAST website under *Procurement Tools & Resources* to measure the quality and timely reporting of past performance information. CPARS is the official source for past performance information.
 - (3) The FAA must prepare an evaluation of contractor performance for each contract or order that exceeds the following thresholds. (Note: If evaluations are completed at the base indefinite-delivery contract level, then none of the task/delivery orders placed against it should be evaluated individually.)
 - (1) Services exceeding \$5,000,000
 - (2) Supply contracts exceeding \$10,000,000
 - (3) Construction contracts exceeding \$10,000,000
 - (4) Research & Development contracts exceeding \$5,000,000
 - (4) An evaluation of contractor performance is required for each contract or order that exceeds the above-specified thresholds placed against a Federal Supply Schedule, contract, or any other ordering Agreement.
 - (5) Past performance evaluations must be prepared as specified in the FAA CPARS Guide, located on the FAST website under *Procurement Tools & Resources*. Past performance evaluations are required every 12 months throughout the period of performance of the contract or order and at the time work under contract or order is completed. The reporting should be completed no later than sixty (60) days after the end of the applicable reporting period.
 - (6) *Exceptions.* Contracts or orders made pursuant to the Javits-Wagner-O'Day (JWOD) Act

with firms under the AbilityOne program or with Federal Prison Industries, Inc. (FPI) do not require evaluations.

c. *Roles and Responsibilities.*

- (1) *Focal Point (FP)*. The FP must be a Government employee. Contractors, including advisory and assistance support service contractors and personal services contractors, are not allowed to perform this function. The FP provides overall support for the process for a particular organization, to include registering contracts, set up and maintenance of user accounts, and general user assistance.
- (2) *Assessing Official (AO)*. The AO must be a Government employee who may be the Program Manager (PM), the Contracting Officer's Representative (COR), or the other individual familiar with the contract, program, project, or task/job/delivery order requirements and execution. The AO is responsible for preparing, reviewing, signing, and processing the evaluation.
- (3) *Reviewing Official (RO)*. The RO must be a Government employee who may be the Contracting Officer. The RO is responsible for closing out "Final" evaluations and provides the check-and-balance when there is disagreement between the AO and the contractor. The RO must review and sign the evaluation when the contractor indicates non-concurrence with the evaluation.
- (4) *Designated Contractor Representative*. The Designated Contractor Representative is a representative whom the evaluations will be sent automatically and electronically. The name, title, e-mail address and phone number of the designated contractor representative must be obtained by the AO who will, in turn, provide that information to the FP for authorization access. The designated contractor representative will NOT be a Government employee assigned/authorized to sign the evaluation on behalf of the contractor who is the subject of the evaluation.

- d. *Training*. FAA personnel with CPARS responsibilities (e.g. FP, AO, ~~RO~~, and ~~RO~~ should ~~CORs~~) must complete online training available through the CPARS website [Contractor Performance Assessment Reporting System \(cpars.gov\)](#) under the *Learning Center*, Training by Function or Role.

C Special Contract Administration Actions for Real Property Added 9/2020

1 Real Estate Asset Management Added 9/2020

All contract documents must be scanned at the point of origin (i.e., region-level, etc.) once the lease has been executed. The contract must be uploaded to the real property asset management system,

and attached to the respective lease number.

2 Inspection and Acceptance of Space Added 9/2020

- a. *Inspection.* The CO, or designated representative, should inspect the real property sufficiently in advance of the occupancy date to ensure it is acceptable and ready for use. The vendor must provide a valid occupancy permit unless the local jurisdiction does not issue occupancy permits, in which case a certified copy of the FAA Safety and Environmental Checklist will suffice.
- b. *Acceptance.* Acceptance must be provided in writing. Any discrepancies or unfinished punch list items must be documented in the contract file.
- c. *Deficiencies.* All substantial, deficiencies that impact the FAA's use and/or occupancy of the real property must be corrected by the Vendor before acceptance of the real property, related service, or utility service. The CO is responsible for documenting the substantial deficiencies, and for communicating them to the Vendor.
- d. *Punch List/Inspection.* Once the substantial deficiencies are resolved, the CO must amend the contract to reflect the contract's actual commencement date. Minor deficiencies, "punch list items," should not prevent acceptance of space and commencement of rent. The items must be documented, and communicated to the Vendor. The CO, or designated representative, must conduct a follow-up inspection to ensure that the minor deficiencies are corrected. The results of the follow-up inspection will be documented in the contract file.

D Clauses Revised 9/2020

[view contract clauses](#)

E Procurement Forms Revised 9/2021

Document Name
Amendment of Solicitation/Modification of Contract (SF-30)

F Procurement Samples Revised 9/2021

Document Name
Novation Agreement
Change of Name Agreement

G Procurement Templates Revised 7/2022

Document Name
COR Delegation Memorandum
COR Nomination Form
Stop Work Order

H Procurement Tools and Resources Revised 7/2023

Document Name
AMS Common Authorities for Modifications for Supplies, Services, or Construction
FAA CPARS Guide

I Appendices Revised 9/2021

1 Appendix - When Should a COR be Appointed Revised 9/2021

When Should a COR be Appointed?

Usually Necessary:

- ☐ Contracts for supplies, services or construction with technical complexity, such as:
 - o Major systems
 - o Highly technical services such as engineering, programming, architecture and engineering (A&E) etc.
 - o Evolving technologies (e.g. NEXTGEN)
 - o Large scale construction (e.g. ATCT, ARTCC)
- ☐ Contracts with a long performance time, such as:
 - o Janitorial
- ☐ Items, services or construction requiring extensive oversight and inspection, such as:
 - o Guard services
- ☐ Contracts with a contract type other than firm-fixed-price (e.g. cost-type, T&M/LH)
- ☐ Service or construction contracts with numerous task orders (e.g. TSSC, NISC, eFAST)
- ☐ High-visibility contracts
- ☐ Contracts with numerous contractor personnel, especially when performing at an FAA site
- ☐ Contracts requiring delivery/monitoring of extensive Government furnished property
- ☐ Contracts for real property requiring extensive oversight and inspection

Usually Not Necessary:

- ☐ Contracts delivering commercial fixed-price items or services, such as:

- o Spare parts
- o Office equipment and maintenance
- o Tree trimming/small landscaping projects
- o Other items of a low complexity
- Commercial services with a short performance time, such as:
 - o Copier repair
 - o Elevator repair
 - o Small scale moving services
- Purchase orders with simple terms and conditions that require minimal oversight and inspection
- Short-term contracts to address requirements for a bona-fide emergency
- Renting Portable Storage Units or Procuring Short-term Storage Services

2 Appendix - Guide for Creating and Maintaining Contract Administration Files for Supplies, Services, or Construction Revised 7/2022

The following guidance is intended to assist contracting personnel maintain contract files and perform contract administration. When contracting personnel invest time at contract award to create files and tracking tools, and maintain those files as changes occur, it ultimately helps reduce time required for contract administration and closeout. Organized and maintained files allow contracting personnel to quickly and easily locate documents and information when needed, making contract administration more efficient and less burdensome. The procedures outlined below provide enough detail for effective administration of large contracts. For administration of smaller contracts, contracting personnel can choose those sections that apply.

1. Establishing Contract Administration Files (or Basic Contract Files).

Contract File folders should be used for all files related to the contract. Labels on folders should be typed so they can be easily read and should include the contract number and title of contents (e.g., Basic Contract Folder, Modification Folder, Voucher/Invoice Folder). The Basic Contract File should include the documents listed in the subparagraphs below. Documents should be placed in the folder(s) in the order listed in the Procurement Checklists on FAST and separated by marked tabs or in separate folders. The "Procurement Checklists" should be annotated with the contractor's mailing address and fax number, contractor's point of contact and telephone numbers, Contracting Officer's Representative (COR) name and telephone number, and Quality Reliability Officer (QRO) name and telephone number.

a. *Basic Contract Documents.* A copy of the table of contents should be included in each folder of the Basic Contract File. (Some contracts are large enough to require more than one folder.)

1. Original Signed Contract - Sections A thru J.
2. Distribution Sheet (the Distribution Sheet should be annotated with the date each copy of the contract was distributed.
3. Requisition or procurement request (PR) and appropriate automated procurement system award

- form.
4. Copies of COR Nomination Form, COR Delegation Memorandum, QRO, Property Administrator, and Contract Administrator Designation memoranda.
 5. Any other applicable documents listed in the Contract Organization and File Content List.

b. Contract Data Requirements List (CDRL) Folder. Copies of documents delivered under CDRLs should be filed in the order received, with each version separated by tabs.

c. Voucher/Invoice Folder(for contracts not subject to AMS T3.3.1A.15 Electronic Payment Requests (eInvoicing)). Each voucher/invoice should be filed with its signed voucher/invoice approval certification and record of payment. Vouchers/invoices should be filed chronologically. A financial spreadsheet should be filed on the left side of each Voucher/Invoice Folder. Guidance on creating financial spreadsheets can be found in paragraph (2)(a), below.

d. Working Copy of the Contract. A working copy of the contract should be maintained electronically and in hard copy in a binder. Both copies should be updated to reflect the most current version of the contract each time a modification is issued. To facilitate this process, all modifications should be issued with contract change pages. Changes in the contract change pages should be highlighted (e.g., bold, shaded, or italicized font).

e. Other Contract Folders. Folders should be created for the following contract documentation, as applicable:

1. Incoming Correspondence;
2. Outgoing Correspondence;
3. Subcontracts;
4. Government Furnished Property/Information;
5. Memoranda to the File;
6. Program Management Reviews/Progress /Status Reports;
7. Quality Reliability Officer (QRO) Reports;
8. Contractor and Industrial Security; and
9. Modifications.

2. Processing Vouchers/Invoices.(for contracts not subject to AMS T3.3.1A.15 Electronic Payment Requests (eInvoicing))

a. Financial Spreadsheet. A financial spreadsheet should be developed to track total contract obligations and invoice payments. This provides the current balance of contract funds. For contracts containing many Contract Line Item Numbers (CLINs), it may be helpful to develop a spreadsheet for each CLIN. For contracts containing task orders, it may be helpful to develop a spreadsheet for each task order. If spreadsheets are created for each CLIN or task order, a summary financial spreadsheet should be created to provide the current balance of funds for the entire contract.

b. Processing Vouchers/Invoices.

1. Review each voucher/invoice for errors;
2. Record costs and fees separately in spreadsheets;
3. Forward voucher/invoice to COR or FAA Program Office designee for review and acceptance in Procurement System, noting date sent to COR/designee;
4. Set up a "Voucher Suspense Desk File" with a copy of the approval certification; note date due to Accounts Payable. Set a suspense date a few days earlier to trigger COR/designee acceptance and release;
5. Upon confirmation of acceptance in Procurement System by COR/designee, authorize payment of invoice;
6. Make a copy of approval certification and invoice;
7. Place in voucher/invoice folder;
8. Any disallowances must be noted with a memo to the file explaining the deduction and/or rejection and steps taken to notify the contractor. A letter should be written to the contractor explaining the deduction and/or rejection and a copy included with the invoice;
9. Confirm payment was made; and
10. Conduct periodic reviews of payments with Accounts Payable.

3. Correspondence

a. Processing Incoming Correspondence.

1. Create an incoming correspondence log sheet. As correspondence is received, it should be annotated in the log and filed in the incoming correspondence folder. Completed log sheets should be filed on the right side of each folder on top of incoming correspondence. Completed log sheets can be filed in hand-written form; however, if the information is typed in an electronic document, the log can be searched electronically.
2. Incoming correspondence by serial number, CDRL number or reference, subject, and date.
3. Review the correspondence and take action as required. If the correspondence requires COR review and/or action, be sure to give the COR a suspense date and file a copy of the e-mail or memo and correspondence in a "COR Suspense Desk File."
4. If the appropriate action includes providing a response to the contractor, prepare a written response using the outgoing correspondence procedures described in paragraph (3)(b), below.

b. Processing Outgoing Correspondence.

1. Create an outgoing correspondence log sheet. Completed log sheets should be filed on the right side of each folder. Completed log sheets can be filed in hand-written form; however, if the information is typed in a Microsoft Word document, the log can be searched electronically.
2. Log all outgoing correspondence using the next available serial number, entering CDRL number or reference, subject, and date. (Note: to make outgoing correspondence easier to track, it can be helpful to include in the correspondence serial number the calendar or fiscal year and program acronym.)
3. When preparing outgoing correspondence, it is helpful to create an electronic outgoing correspondence directory to create and store electronic copies of correspondence. The serial number from the outgoing correspondence log should be typed in the top right corner of the

- outgoing letter. The subject line of the letter should be included in the log for quick reference.
4. The file copy of letters to the contractor should be filed in the outgoing correspondence folder with relevant documents.

4. Processing Modifications to the Basic Contract

a. Preparing the Modification.

Each modification should include an Amendment of Solicitation/Modification of Contract (SF-30) or appropriate automated procurement system modification form to meet the requirements of the specific modification. If an SF-30 is used to award the modification, the file must also contain the automated procurement system modification form.

1. A modification summary, each page of which should be annotated with the contract, requisition, modification, and page numbers. The modification summary should include:
2. A preamble summarizing all changes included in the modification.
3. A section by section, detailed description of the changed or modified parts of the contract. This description should include from/to statements to explain the change.
4. If funds are involved, Section G is always modified to show the new CLIN and appropriation data and amount as well as the affect the modification has on total contract value. This amount should match the amount on the SF-30 and automated procurement system modification form.
5. Contract change pages (with changes highlighted) for the working copy of the contract. The modification number should be printed in the top left corner of each modified page.

b. Distributing the Modification. Prepare a Distribution Sheet to document proper distribution of the modification. Annotate the Distribution Sheet with the date distribution was made.

c. Filing the Modification. The modification file should include the documents listed in the subparagraphs below. If the modification is large enough to be filed in its own folder, it is helpful to include a table of contents listing the modification and all other supporting documents included in the folder. Copies of the modified/changed contract pages should be filed in the working copy of the contract. The electronic version of the working contract should be updated to include the changed pages.

1. Signed SF-30 and automated procurement system modification form, the modification, and any associated documents (e.g., memoranda to the file, Determinations and Findings, contractor proposals, negotiation memoranda)
2. Requisition or PR.
3. Distribution Sheet.
4. Any other applicable documents.

d. Other Actions Related to Modifications:

1. Update or create appropriate financial spreadsheets (described in paragraph 2.a); and

2. Create a Modification Summary Table. This document provides a quick reference documenting by modification number the description, type (bilateral or unilateral), dollar amount, and date of each modification. The electronic version of the table can be searched, allowing quick retrieval of modification information.

5. Preparing Memoranda to the File.

Typed or hand-written notes should be prepared to document telephone calls and meetings, and filed in a single folder as memoranda to the file. These notes should include a list of participants, the topic, the date, and action items assigned for each telephone call and meeting.

6. Maintaining the Subcontract File.

If applicable, ensure that the contract has an approved Subcontracting Plan that has been incorporated into the contract by reference and has been made an attachment to the basic contract. File copies of all subcontracting documentation in the Subcontract File. Ensure that the contractor submits the required subcontracting information to the Electronic Subcontracting Reporting System (eSRS) electronically in accordance with AMS clause 3.6.1-4 "Small, Small Disadvantaged, Women-Owned, Service-Disabled Veteran Owned Small Business, and HUBZone Small Business Subcontracting Plan.

7. Processing CDRLs

a. Submission and Review of CDRLs. The contractor should submit CDRLs in hard copy or electronically in accordance with the contract (Block 15 of CDRL). Procedures should be established to ensure that all CDRLs are reviewed by the CO and responsible program/technical representatives and that comments are provided to the CO in a timely manner. Most CDRLs have a time limit for Government review and response. The document transmitting comments to the CO should be filed so it can be used to support COR/technical review.

b. Processing Comments and Changes to and Approving CDRLs. CDRL discrepancy forms should be developed to transmit comments to the contractor. Comments regarding CDRLs and approval of CDRLs should be transmitted to the contractor under a transmittal letter prepared by the CO. The transmittal letter should include re-submittal requirements if applicable. The transmittal letter should be filed in the outgoing correspondence folder. Changes to CDRLs, including extensions to submission or review dates, should include adequate consideration. These revisions must be documented in a contract modification establishing the new terms.

c. Tracking CDRLs. The CO should create a tracking system to manage submission of all CDRLs.